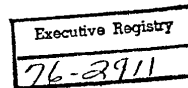


# United States District Court

FOR THE

DISTRICT OF COLORADO



CIVIL ACTION FILE NO. \_\_\_\_\_

ZDENEK CERVENY,

Plaintiff

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant

76 - - 690

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon HORNBEIN, MacDONALD & FATTOR

plaintiff's attorney s, whose address 1600 Broadway, Suite 1900, Denver, Colorado 80202, and file with the Clerk of this Court

an answer to the complaint which is herewith served upon you, within <sup>30</sup>~~60~~ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES R. MANSPEAKER

Clerk of Court.

Deputy Clerk.

Date: JUL 12 1976

[Seal of Court]

EXECUTIVE REGISTRY FILE

OGC

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

OGC Has Reviewed

UNITED STATES COURT  
DISTRICT OF COLORADO

76 JUL 12 P 1:37

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Civil Action No.

JAMES L. STANLEY  
CLERK  
BY \_\_\_\_\_ DEP. CLK.

ZDENEK CERVENY,

Plaintiff,

vs.

CENTRAL INTELLIGENCE AGENCY,

Defendants.

76 - - 690

COMPLAINT

Plaintiff, Zdenek Cervený, by and through his attorneys, Hornbein, MacDonald & Fattor, for his Complaint against the Defendant Central Intelligence Agency (hereinafter referred to as the "CIA") alleges as follows:

1. This is an action under the Freedom of Information Act, as amended, 5 U.S.C. §552, to require disclosure of information and production of agency records improperly withheld from the Plaintiff.

2. Jurisdiction over this action is vested in this Court pursuant to the provisions of 5 U.S.C. §552(a)(4)(B).

3. Plaintiff is the nephew of Thomas Riha and the duly appointed Conservator of Riha's estate, as evidenced by the Letters of Conservatorship issued by the Probate Court in and for the City and County of Denver, State of Colorado in The Matter Of The Estate Of Thomas Riha, An Absentee, No. T-53669. A copy of the said Letters is attached hereto as Exhibit A.

4. Plaintiff is now, and at all times material herein has been, a resident of the State of Colorado.

5. The Defendant CIA is an "agency" within the meaning of the Freedom of Information Act, 5 U.S.C. §552(3), and said Defendant is an "agency" as defined in 5 U.S.C. §551(1).

6. Thomas Riha disappeared, under mysterious and unexplained circumstances, from his residence in Boulder, Colorado on or about March 19, 1969, and has not been heard from by his relatives, friends, associates, or acquaintances since that time. Proceedings were commenced in the Probate Court in and for the City and County of Denver, State of Colorado in 1970 to recover and preserve the assets of Riha's estate, and Riha was subsequently declared to be an absentee and a conservator was appointed to protect the interests of the absentee.

7. Under state law, 1973 Colorado Revised Statutes §15-10-107(c), a person who is absent for a continuous period of seven years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier. As Riha's closest surviving relative, and as Conservator of his estate, Plaintiff has undertaken a diligent search and inquiry into the disappearance and present whereabouts of Thomas Riha.

8. In November, 1975, James Angleton, a former CIA official, testified before the Senate Select Committee on Intelligence Activities of the United States Senate concerning the disappearance and present condition or whereabouts of Riha. Subsequently, the Defendant furnished information contained in the CIA files relating to the disappearance and whereabouts of Riha to the Senate Select Committee. According to a report entitled "The Riha Inquiry" prepared by the staff of the Senate Select Committee on Intelligence Activities under date of February, 1976, and according to a statement of Senator Gary Hart of Colorado, the records of the Defendant contain information concerning the possible present whereabouts of Riha.

9. By letter dated February 17, 1976, the Plaintiff,

by his attorneys, requested the Defendant CIA to furnish Plaintiff, pursuant to the Freedom of Information Act, any information concerning the disappearance or whereabouts of Riha in the possession of the agency, and to make available to Plaintiff any and all agency records containing information relating to Riha's disappearance or whereabouts. Plaintiff specifically requested the CIA to furnish copies of certain memoranda that had been released to the Senate Select Committee concerning a possible sighting of Riha in Czechoslovakia in 1973.

10. The aforesaid requests submitted to the Defendant pursuant to the Freedom of Information Act by the Plaintiff complied in all respects with the requirements of the Act and regulations pursuant thereto.

11. By letter of March 8, 1976, the CIA acknowledged receipt of Plaintiff's request for information under the Act. Subsequently, the CIA furnished Plaintiff's attorneys with two memoranda referring to an alleged sighting of Riha in Czechoslovakia in 1973, but the identities of the sources of the information furnished to the CIA, and the names of the persons who allegedly saw Riha after his disappearance were deleted from the said memoranda. The said memoranda are the only records which the CIA has made available to the Plaintiff in response to his request under the Act.

12. By letter dated April 9, 1976, the Defendant notified counsel for Plaintiff that information concerning the identity of the sources, and the names of the persons who allegedly sighted Riha in 1973, fell within the exemption provisions of 5 U.S.C. §552(b)(1) and (b)(3). Defendant advised Plaintiff that review of the decision to delete the identities and names from the said memoranda was available by appealing to the CIA Information Review Committee.

13. By letter dated April 23, 1976, the Plaintiff, through his attorneys and pursuant to the Act and regulations thereunder, 3 C.F.R. §1400.51, duly appealed the decision of

the Defendant to delete the names and identities of the sources and persons allegedly making the Riha sighting from the aforesaid memoranda, and appealing the failure of the Defendant to fully comply with the Plaintiff's request for information.

14. Defendant acknowledged receipt of Plaintiff's appeal on April 30, 1976. As of the present date, Plaintiff has received no final decision of his appeal, and the maximum time for such decision, as provided by 5 U.S.C. §552(a)(G)(6), has expired. The Plaintiff has made no agreement with the CIA to extend the period for completion of the review of Plaintiff's appeal of denial of information requested under the Act.

15. Defendant's failure to make a final disposition of Plaintiff's appeal within the time permitted by the Act constitutes a denial of the relief requested in said appeal. Plaintiff has, therefore, exhausted the applicable administrative remedies.

16. All of the information and records sought by Plaintiff in his Freedom of Information Act request including the names and identities deleted from the aforesaid CIA memoranda, must be made available to Plaintiff under the provisions of the Freedom of Information Act, and none of the requested information and records is exempt from disclosure under the Act.

17. Defendant's failure and refusal to furnish the requested information is arbitrary, capricious, and without legal justification, and deprives Plaintiff of public information to which he is entitled to access.

18. The requested information is necessary in order for Plaintiff to carry out his statutory duties as Conservator of the estate of Thomas Riha and it is imperative that the requested information concerning the disappearance and whereabouts of Riha be made available, through Plaintiff, to the Probate Court in and for the City and County of Denver in order that a determination may be made as to whether or not Riha should be presumed to be dead under C.R.S. §15-10-107.

19. The refusal of the Defendant to disclose information requested by the Plaintiff has caused, and will continue to cause until and unless enjoined by this Court, serious and irreparable injury to Plaintiff and to the estate of the Absentee, for which no adequate remedy at law exists.

WHEREFORE, Plaintiff respectfully prays that this Court: —

1. Enjoin the Defendant from withholding from Plaintiff any and all agency records containing information concerning the disappearance, condition, or whereabouts of Thomas Riha.

2. Require the Defendant to forthwith produce for inspection and copying by Plaintiff any and all such agency records.

3. Require the Defendant to furnish Plaintiff with any and all information in its possession concerning the disappearance, present condition, or whereabouts of Thomas Riha, including the results of any inquiries concerning Riha made by Defendant pursuant to Plaintiff's request for information under the Freedom of Information Act.

4. Determine the matter of Plaintiff's request for information de novo, and examine the contents of the agency records requested by Plaintiff in camera to determine whether such records or any part thereof fall within the exemption set forth in 5 U.S.C. §552(b) and impose on the Defendant the burden to sustain its action denying Plaintiff access to the requested records.

5. Award Plaintiff reasonable attorneys fees and other litigation costs reasonably incurred by Plaintiff in this action.

6. Grant the Plaintiff such additional relief as the Court deems proper and just.

7. Advance this action on the Court's docket in accordance with the provisions of 5 U.S.C. §552(a)(4)(D), and assign this case for hearing and trial or for argument at the earliest

practicable date, and expedite this action in every way.

Respectfully submitted,

HORNBEIN, MacDONALD & FATTOR

BY:

Martin D. Buckley, #4593  
Attorneys for Plaintiff  
1600 Broadway, Suite 1900  
Denver, CO 80202  
Telephone: (303) 825-2125

AUG 6 1974

EXHIBIT A

Court Filing Stamp

FILED IN PROBATE COURT  
CITY & COUNTY OF DENVER, COLO.

JUL 30 1974

D. M. ROWLEY

## IN THE PROBATE COURT

In and for the City and County of Denver  
and State of Colorado

Honorable David Brofman, Judge

No. P-53669

IN THE MATTER OF THE ESTATE OF

THOMAS RIHA,

LETTERS

ABSENTEE

Ward

THE PEOPLE OF THE STATE OF COLORADO

To all to whom these presents shall come—GREETING:

WHEREAS, on the 14th day of March, 1969,

was the last date said absentee was heard of, and his property  
requires protection; and ---~~was found to be mentally ill by a Commission appointed by this Court which report and findings  
of said Commission were thereupon approved by the Court as required by law and~~

WHEREAS, on the 13th day of June, 1974,

--- ZDENEK CERVENY was ---

duly appointed --- SUCCESSOR CONSERVATOR ---

of the estate of said ward by the Probate Court of the City and County of Denver, State of Colorado,  
with all the authority thereto pertaining;NOW, THEREFORE, by order of said Court, these Letters are issued as evidence of such  
appointment and authority.WITNESS, my signature and the seal of said Court, this thirtieth  
day of July, 1974.

## PROBATE COURT

City & County of Denver, Colo.  
Certified to be full, true and correct  
copy of the original in my custody,  
and the same remains in full force  
and effect and has not been revoked.

NOV 3 - 1975

D. M. ROWLEY

CLERK

DEPUTY CLERK

D. M. ROWLEY,

Clerk of the Probate Court.

lvk



Approved For Release 2004/12/20 : CIA-RDP79M00467A000300130034-8

STATINTL

Approved For Release 2004/12/20 : CIA-RDP79M00467A000300130034-8